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MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-543

BRIDGEPORT GUARDIANS, INC., *et al.*,

Petitioners,

VS.

MEMBERS OF THE
BRIDGEPORT CIVIL SERVICE COMMISSION, *et al.*

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Petitioners Bridgeport Guardians, Inc. et al., submit this supplemental memorandum with regard to this Court's decision in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, No. 73-1977 (May 12, 1975).

This case presents the question, discussed but not decided in *Alyeska*, of whether the federal courts have the power, under the "common benefit" rule, to award counsel fees where a successful plaintiff has conferred a substantial benefit on the public and where, by imposing that award on a governmental entity, the cost is passed on to the public. In *Alyeska* the court of appeals disclaimed reliance on the common benefit theory, since an award against the defendant Alyeska Pipeline Service would not have been borne by the benefiting public. 495 F.2d 1026, 1029; slip opinion, p. 5, n. 14; p. 19. Although *Alyeska* did not fall within the ambit of the common benefit rule, this Court reaffirmed the vitality of that rule as expounded

from *Trustees* v. *Greenough*, 105 U.S. 527 (1881) to *Hall* v. *Cole*, 412 U.S. 1 (1973), and declined to limit the rule to benefits under "important" statutes. Slip opinion, pp. 17-18, 24-25, n. 39.

In the instant case, both courts below expressly acknowledged the "substantial public service" which plaintiffs had performed for the citizens of Bridgeport by ending racial discrimination in the hiring of police officers, a finding not questioned by respondents. Petition 17-18. The importance to the community of effective law enforcement is beyond dispute; the lower courts correctly concluded the integration of the Police Department had substantially increased its ability to protect the public. An award of counsel fees against the defendant city agencies, to be met in turn from taxes paid by city residents, would spread the cost equitably among the beneficiaries of that more effective law enforcement. The decisions of this Court require an award of counsel fees where the benefited class is composed of bond holders, *Trustees* v. *Greenough*, 105 U.S. 527 (1883), stockholders, *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970), creditors, *Central Railroad and Banking Co.* v. *Petus*, 113 U.S. 116 (1885), trust beneficiaries, *Sprague* v. *Ticonic National Bank*, 307 U.S. 161 (1939), and union members, *Hall* v. *Cole*, 412 U.S. 1 (1973). Certiorari should be granted to decide whether, and under what circumstances, that common benefit rationale is applicable to cases conferring benefits on the public.

This case also presents a significant question regarding the applicability of new statutes to pending cases. This is an action alleging racial discrimination in public employment, a practice now forbidden by Title VII, which expressly authorizes awards of counsel fees. 42 U.S.C. § 2000e-5(k). This case, however, was filed in February, 1972, one month *before* Title VII was amended to apply

to public employment; the action was therefore commenced under 42 U.S.C. §§ 1981 and 1983. Because Title VII did not then apply to them, plaintiffs could not meet the technical prerequisite to a Title VII action—the filing of a complaint with the Equal Employment Opportunity Commission. The principles reaffirmed in *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969) and *Bradley* v. *School Board of City of Richmond*, 416 U.S. 696 (1974), require that the counsel fee provisions of Title VII be applied to public employment cases pending on March 24, 1972, when Title VII was made applicable to such discrimination. It would clearly be unjust to penalize plaintiffs for promptly pursuing ripe claims or for failing to file a complaint with EEOC when it was, as a matter of law, impossible to do so.

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Second Circuit.

Respectfully submitted,

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